

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
vs.)	No. S1-4:15-CR-00441-CDP-NCC2
)	
DONALD STEWART,)	
)	
Defendant.)	

**DEFENDANT STEWART'S RESPONSE TO CERTAIN MATTERS
AS DIRECTED BY THIS COURT IN THE ORDER ENTERED SEPTEMBER 19, 2017**

Come now attorneys John Stobbs and Daniel Schattnik on behalf of Defendant Donald Stewart, and hereby respond to various matters as directed by this Honorable Court in the order of September 19, 2017, filed as Document 121:

Said Order required the following:

1. **DIRECTIVE:**

The government was directed to file its proposed jury instructions, including a proposed verdict form, not later than December 4, 2017.

RESPONSE:

Defense counsel acknowledge the receipt of said instructions from the government.

2. **DIRECTIVE:**

The government was directed to notify defense counsel of any transcripts of recordings that it proposes to use at trial, and after informal attempts to resolve disputes as to accuracy, the defense was directed to file any motion challenging accuracy of transcripts not later than December 12, 2017.

RESPONSE:

While no transcripts of recordings have been provided to defense counsel, the government and defense counsel met in good faith on December 20, 2017, to discuss various evidentiary issues, at which time the government advised the defense that certain recordings were in the process of being transcribed, and stated that the transcripts will be provided to defense counsel upon completion, at which time defense counsel will compare the transcripts to the provided recordings, and after consultation with the government, will file objections regarding any unresolved issues as to any transcripts provided.

3. **DIRECTIVE:**

The government was directed to notify defense counsel of its intent to use evidence under Federal Rule 404(b), 609 and 702, and was advised that it must specifically describe the substance of that evidence, not later than December 11, 2017.¹

RESPONSE (a)

On December 11, 2017, the government filed a document under seal (Doc 134) entitled Government's Pretrial Memorandum. In said document, the government provides a general outline of the various evidentiary events which it anticipates will be included within its case-in-chief. While the document does not specifically provide a designated list of "Rule 404(b) evidence," it is clear to the defense that the events described within said memorandum will be offered as evidence by the

1. The Court's original Order set forth a deadline of December 4, 2017, but was then extended in subsequent orders marked as Documents 131 and 133 to a final date of December 11, 2017.

government first under a theory that the evidentiary events are intrinsic to the charges contained within the Superseding Indictment, and if rejected by the Court on that theory, that they will then be offered where applicable as evidence under Rule 404(b) of the Federal Rules of Evidence (FRE).

RESPONSE (b):

With regard to notification of evidence pursuant to FRE Rule 609, the government has earlier provided to the defendant evidence relating to an old manslaughter conviction, an old tampering conviction and an old stolen property conviction, all of which will be the subject of a defense motion in limine.

RESPONSE ©):

With regard to notification of evidence pursuant to FRE Rule 702, the government filed its disclosure of anticipated expert testimony as Document 132.

4. **DIRECTIVE:**

Both parties must file any motions in limine seeking to exclude or limit evidence not later than December 22, 2017.²

RESPONSE:

Concomitant with the filing of this response, the defense is placing on file its motions in limine; while the Court's order does not mandate a specific defense rebuttal to the government's Rule 404(b) Notice, the defense will file a motion in limine which provides a general response to the government's generalized disclosure.

2. The order as originally entered (Doc 121) had a deadline of December 12, 2017, but was extended by the Court in response to defense motions for extensions of time (Doc 139).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on 22nd day of December, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon all counsel of record, including but not limited to AUSA Dean R. Hoag and AUSA Michael A. Reilly as well as attorneys for co-defendant Wilson.

/S/ Daniel R. Schattnik
Daniel R. Schattnik, #03122234 IL